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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/749,165	12/27/2000	Robert E. Sobol	10003840-1	4943

7590 04/22/2005

HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P. O. Box 272400
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EXAMINER

TUCKER, WESLEY J

ART UNIT	PAPER NUMBER
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2623

DATE MAILED: 04/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	Application No. 09/749,165	Applicant(s) SOBOL, ROBERT E.	
	Examiner Wes Tucker	Art Unit 2623	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 April 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
 13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that the reference of U.S. Patent 6,571,003 to Hillebrand does not teach the claimed feature "wherein said image enhancer is configured to initiate, without user intervention, manipulation of said portion for enhancing said appearance in response to identification of said portion by said image enhancer" with primary emphasis on "without user intervention." Applicant goes as far as to say that the Hillebrand teaches against said feature (p.11, top). Examiner maintains that the operations performed in Hillebrand are configured to be performed by the controller without user intervention. Applicant argues that Hillebrand suggests that the operator is responsible for initiating the image enhancement because the image is displayed at a time of recommending treatment (column 11, lines 53-57). It could just as easily be suggested by Hillebrand that there is a default image manipulation that occurs automatically when no user input is required or a default magnitude for image improvement. Examiner maintains that the display and controller generate the image with no specified input from the user as read from (column 11, lines 46-49). Applicant also argues that Hillebrand allows the operator to enter a magnitude for defect improvement (column 12, lines 6-9) and therefore teaches away from the invention. However examiner points to Applicant's own specification on page 14, lines 15-22 where the "user may control the type of image enhancement." Hillebrand's "magnitude for defect improvement" is interpreted as the type of image enhancement. The suggestion inferred by the applicant is not considered grounds for the reference to teach away from the invention. Computer programs by their very nature allow for user input at any number of steps along the way to perform the desired operation. If the program allows for user input, the program will pause and allow it, if the parameters are already known the program will simply proceed without the user input. The response regarding claim 1 applies to the other independent claims 9, 10, 18, 21, 24, 28, 29 and 30. With regard to Applicant's arguments regarding claims 23, 24, 26, 27, 28, and the limitation of detecting a plurality of faces, it is shown in Kinjo that multiple face candidate regions are detected and the face candidate regions are identified according to whether they are actually faces. The obviousness of the combination lies in the combination of finding a face and then determining a portion of the face to enhance. If this is done on one face, it only follows that it can be done on additional faces in the combination of Hillebrand and Kinjo.



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